

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RICHARD RUEDA
160 Justin Dr.
West Chester, PA 19382

Plaintiff,

v.

MCKENZIE’S BREWHOUSE, INC.
d/b/a McKenzie’s Brewhouse
240 Lancaster Avenue
Malvern, PA 19355

Defendant.

CIVIL ACTION

No.: _____

JURY TRIAL DEMANDED

CIVIL ACTION COMPLAINT

Plaintiff, by and through his undersigned counsel, hereby avers as follows:

I. INTRODUCTION

1. This action has been initiated by Richard Rueda (hereinafter referred to as “Plaintiff”) against McKenzie’s Brewhouse, Inc. (hereinafter referred to as “Defendant”) for violations of Title VII of the Civil Rights Act of 1964 (“Title VII - 42 U.S.C. §§ 2000d *et. seq.*”) and the Pennsylvania Human Relations Act (“PHRA”).¹ As a direct consequence of Defendant’s unlawful actions, Plaintiff seeks damages as set forth herein.

II. JURISDICTION AND VENUE

2. This Court, in accordance with 28 U.S.C. § 1331, has jurisdiction over Plaintiff’s claims because this civil action arises under laws of the United States.

¹ Plaintiff’s claims under the PHRA are referenced herein for notice purposes. He is required to wait 1 full year before initiating a lawsuit from date of dual-filing with the EEOC. Plaintiff must however file his lawsuit in advance of same because of the date of issuance of his federal right-to-sue-letter under Title VII. Plaintiff’s PHRA claims however will mirror identically his federal claims under Title VII.

3. This Court may properly maintain personal jurisdiction over Defendant because Defendant's contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in International Shoe Co. v. Washington, 326 U.S. 310 (1945) and its progeny. This Court has supplemental jurisdiction over Plaintiff's future state-law claim(s) because such claim(s) arise out of the same common nucleus of operative facts as his federal claims asserted herein.

4. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this district because all of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district, and in addition, Defendant is deemed to reside where it is subject to personal jurisdiction, rendering Defendant a resident of the Eastern District of Pennsylvania.

5. Plaintiff is proceeding herein under the Title VII, and has properly exhausted his administrative remedies by timely filing a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") and by filing the instant lawsuit within ninety (90) days of receiving a notice of dismissal and/or right to sue letter from the EEOC.

III. PARTIES

6. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

7. Plaintiff is an adult individual, with an address as set forth in the caption.

8. Defendant is company that owns and operates three restaurants throughout Pennsylvania and does business as "McKenzie's Brewhouse."

9. At all times relevant herein, Defendant acted by and through its agents, servants and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendant.

IV. FACTUAL BACKGROUND

10. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

11. Plaintiff is a male.

12. While Defendant has three (3) locations throughout Pennsylvania (in Malvern, Chadds Ford, and Devon Pennsylvania), Plaintiff was hired to work for Defendant's Malvern, Pennsylvania location – which operates as a bar / restaurant.

13. Plaintiff was hired by General Manager, Jessica James (hereinafter "James") and in total worked for approximately 1 month until he was unlawfully terminated from his employment on or about August 14, 2020.

14. James was supervised by Will Mangin (hereinafter "Mangin"), a Director of Operations for Defendant.

15. At all times during his employment with Defendant, Plaintiff's title was "Bartender."

16. During his employment with Defendant, Plaintiff was a hard-working and dedicated employee; however, his work experience was tainted by the constant sexual harassment that he was subjected to by James.

17. Throughout his short tenure with Defendant, Plaintiff endured sexual harassment from James that was both severe and pervasive and consisted of multiple unwelcomed sexual

advances, comments and gestures on a consistent basis. By way of example only and not intending to be an exhaustive list, James:

- i. told employees she hired Plaintiff because he is good looking;
- ii. told employees she wanted to “get with” Plaintiff;
- iii. consistently commented about Plaintiff’s looks;
- iv. continually sat at the bar drinking, trying to flirt with Plaintiff;
- v. stayed beyond her shifts to sit at the bar until Plaintiff left, so she could walk out with him;
- vi. dressed provocatively to try and get Plaintiff’s attention;
- vii. told Plaintiff that she was looking for houses in his development and described the physical vicinity of his house based upon her clearly having driven around his residential area;
- viii. tried claiming she was too drunk to drive and wanted Plaintiff to drive her, but then attempted to follow him home (causing him to take another route); and
- ix. was angering other staff by repeatedly standing near Plaintiff behind the bar trying to help him instead of doing her job or helping other parts of the restaurant.

18. Not only did Plaintiff reject James’s advances, he expressed concerns about her conduct to his co-bartender and a supervisor.

19. Plaintiff’s co-bartender tried to help Plaintiff by telling James that Plaintiff was not interested in her, she will get nowhere, and to stop with her advances.

20. Following Plaintiff's concerns and attempted help from the co-bartender (discussed *supra*), James became very distant for approximately two (2) days.

21. Then on or about August 14, 2020, without warning and very abruptly, Plaintiff was informed by Mangin that he was terminated.

22. Plaintiff was informed that the reason for his separation was due to a customer complaint, but Mangin would not elaborate any further.

23. In response to Plaintiff's Charge of Discrimination, filed with the EEOC, Defendant submitted a position statement, attaching a customer's emailed complaint that referenced one bartender (but does not say the bartender's name). Defendant asserts in its position statement to the EEOC that upon receiving this complaint, Mangin allegedly interviewed two of his senior bartenders and they too complained of Plaintiff's performance.

24. Defendant informed the EEOC that it was the aforesaid single customer complaint and negative feedback from its senior bartenders that led to its decision to terminate Plaintiff (even though Mangin only informed Plaintiff he was being terminated because of a customer complaint).

25. Plaintiff's termination is completely pretextual because (1) Defendant (like all restaurants generally) receives multiple customer complaints regarding food, staff, service, and wait times on a monthly basis and does not terminate employees due to one complaint; (2) presumably knowing this to be true, Defendant changed the reason for Plaintiff's termination when it was required to respond to Plaintiff's EEOC charge and stated that it was the complaint and negative feedback provided by senior bartenders that led to Plaintiff's termination; (3) Plaintiff was never disciplined for his performance or any other issues prior to his termination from Defendant; (4) Defendant admits in its position statement submitted to the EEOC that it

never informed Plaintiff he was being terminated for negative feedback provided by senior bartenders; and (5) statements signed by the senior bartenders attesting to Plaintiff's alleged poor performance (which were submitted to the EEOC by Defendant in conjunction with its position statement) were not signed until well after Plaintiff was terminated.

26. Based on the foregoing, Plaintiff believes and therefore avers that his termination was clearly for rejecting advances and in retaliation for opposing sexual harassment.

Count I
Violations of Title VII of the Civil Rights Act of 1964 ("Title VII")
(Sexual Harassment – Hostile Work Environment and Retaliation)

27. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

28. Plaintiff was subjected to severe and pervasive sexual gestures, advances, and comments by Defendant's general manager, such that he was subjected to a hostile work environment.

29. Plaintiff specifically rejected and opposed James' inappropriate sexual comments/advances/gestures.

30. Within approximately 2 days after Plaintiff's concerns and attempted help from a co-bartender (discussed *supra*), Plaintiff was suddenly informed that he was being terminated by Mangin for completely pretextual reasons.

31. Plaintiff's termination from Defendant was clearly for rejecting advances and in retaliation for opposing sexual harassment.

32. Defendant's actions as aforesaid constitute violations of Title VII.

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

A. Defendant is to promulgate and adhere to a policy prohibiting sexual harassment and retaliation in the future against any employee(s);

B. Defendant is to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendant's illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, insurance, and benefits.

C. Plaintiff is to be awarded actual damages, as well as damages for the pain, suffering, and humiliation caused by Defendant's actions;

D. Plaintiff is to be awarded punitive damages as permitted by applicable law in an amount believed by the Court or trier of fact to be appropriate to punish Defendant for its willful, deliberate, malicious, and outrageous conduct and to deter Defendant or other employers from engaging in such misconduct in the future;

E. Plaintiff is to be accorded other equitable and legal relief as the Court deems just, proper, and appropriate;

F. Plaintiff is to be awarded the costs and expenses of this action and a reasonable attorney's fees as provided by applicable federal and state law; and

G. Plaintiff is to receive a trial by jury.

Respectfully submitted,

KARPF, KARPF & CERUTTI, P.C.

By:

A handwritten signature in black ink, appearing to be 'Ari R. Karpf', written over a horizontal line.

Ari R. Karpf, Esquire
3331 Street Road
Two Greenwood Square
Suite 128
Bensalem, PA 19020
(215) 639-0801

Dated: April 20, 2021

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Richard Rueda

v.

CIVIL ACTION

McKenzie's Brewhouse, Inc. d/b/a McKenzie's Brewhouse

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

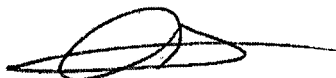
- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

4/20/2021

Date

(215) 639-0801

Telephone



Attorney-at-law

(215) 639-4970

FAX Number

Plaintiff

Attorney for

akarpf@karpf-law.com

E-Mail Address

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 160 Justin Drive, West Chester, PA 19382

Address of Defendant: 240 Lancaster Avenue, Malvern, PA 19355

Place of Accident, Incident or Transaction: Defendant's place of business

RELATED CASE, IF ANY:

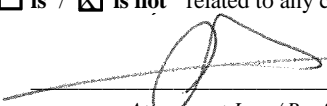
Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 4/20/2021


Attorney-at-Law / Pro Se Plaintiff

ARK2484 / 91538

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> | 1. Indemnity Contract, Marine Contract, and All Other Contracts |
| <input type="checkbox"/> | 2. FELA |
| <input type="checkbox"/> | 3. Jones Act-Personal Injury |
| <input type="checkbox"/> | 4. Antitrust |
| <input type="checkbox"/> | 5. Patent |
| <input type="checkbox"/> | 6. Labor-Management Relations |
| <input checked="" type="checkbox"/> | 7. Civil Rights |
| <input type="checkbox"/> | 8. Habeas Corpus |
| <input type="checkbox"/> | 9. Securities Act(s) Cases |
| <input type="checkbox"/> | 10. Social Security Review Cases |
| <input type="checkbox"/> | 11. All other Federal Question Cases |
- (Please specify): _____

B. Diversity Jurisdiction Cases:

- | | |
|--------------------------|--|
| <input type="checkbox"/> | 1. Insurance Contract and Other Contracts |
| <input type="checkbox"/> | 2. Airplane Personal Injury |
| <input type="checkbox"/> | 3. Assault, Defamation |
| <input type="checkbox"/> | 4. Marine Personal Injury |
| <input type="checkbox"/> | 5. Motor Vehicle Personal Injury |
| <input type="checkbox"/> | 6. Other Personal Injury (Please specify): _____ |
| <input type="checkbox"/> | 7. Products Liability |
| <input type="checkbox"/> | 8. Products Liability – Asbestos |
| <input type="checkbox"/> | 9. All other Diversity Cases |
- (Please specify): _____

ARBITRATION CERTIFICATION

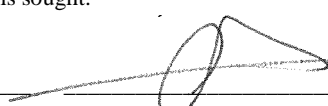
(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Ari R. Karpf, counsel of record or pro se plaintiff, do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE: 4/20/2021


Attorney-at-Law / Pro Se Plaintiff

ARK2484 / 91538

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

